



U.S. Department of Justice

*United States Attorney
Southern District of New York*

*The Silvio J. Mollo Building
One Saint Andrew's Plaza
New York, New York 10007*

April 24, 2019

BY ECF

The Honorable Edgardo Ramos
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: United States v. Christian Dawkins and Merl Code, S1 17 Cr. 684 (ER)

Dear Judge Ramos:

The Government writes respectfully to oppose defendant Merl Code's request for a limiting instruction regarding co-conspirator hearsay statements that occurred before Code entered the conspiracy. By email, the defense requested the below limiting instruction:

Merl Code is not alleged to have joined any of the conspiracies charged in this Indictment until on or about June 20, 2017. You have received many hours of testimony already that relates to conduct that is alleged to have occurred prior to that date, and so I want to instruct you as follows:

A person who is alleged to have participated in a conspiracy cannot, under our law, be held liable for any conduct that occurred before his alleged agreement to join the conspiracy.

Therefore, in considering whether the Government has met its burden of proof with respect to Mr. Code, you cannot consider any evidence relating to matters occurring before June 20, 2017.

This request misstates the law, as well as the Indictment,¹ and should be rejected by the Court.

Rule 801 (d)(2)(E) provides that a statement is not hearsay if the statement is offered against the defendant and "was made by the party's co-conspirator during and in furtherance of the conspiracy." Thus, "[i]n order to admit a statement under this Rule, the court must find (a) that there was a conspiracy, (b) that its members included the declarant and the party against

¹ The Indictment does not allege a specific date that Code joined the conspiracy, and it will be the role of the jury as fact-finders to determine when, if at all, Code joined the conspiracy.

cc: Defense counsel (by ECF)